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16
17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA
20
21 SAN FRANCISCO DIVISION

22 UNITED STATES OF AMERICA,) Case No. CR 16-462 CRB
23 Plaintiff,)
24 v.) **UNITED STATES' OPPOSITION
25 TO DEFENDANT'S MOTION FOR
26 ACQUITTAL PURSUANT TO
27 RULE 29**
28 SUSHOVAN TAREQUE HUSSAIN,)
Defendant.)
)

29
30 **INTRODUCTION**

31 Defendant Hussain has filed a Motion for Acquittal despite the jury's conviction after
32 trial. Because the evidence of Hussain's guilt was overwhelming, the government respectfully
33 submits that the Court should deny his motion.

34
35 **ARGUMENT**

36 **I. Defendant Cannot Overcome the High Deference to the Jury's Determination That
37 Evidence Was Sufficient to Convict Him**

38 **A. The Legal Standard Under Rule 29**

39 Federal Rule of Criminal Procedure 29 permits courts to set aside a jury's guilty verdict

1 and enter a judgment of acquittal “of any offense for which the evidence is insufficient to sustain
2 a conviction.” Fed. R. Crim. P. 29(a). Where a jury has returned a verdict, however, courts must
3 accord great deference to the jury’s determination, even if the trial judge disagrees with it.

But this inquiry does not require a court to ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt. Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

8 *Jackson v. Virginia*, 443 U.S. 307, 319-20 (1979) (emphasis original) (citation omitted). In
9 addition to viewing the evidence in the light most favorable to the prosecution, a reviewing court
10 must also assume that the jury resolved any conflicts of evidence in favor of the prosecution,
11 determined witness credibility in favor of the verdict, and made any reasonable inferences from
12 the evidence in a way that supports the conviction.

First, the evidence must be viewed in the light most favorable to the government; and second, the reviewing court must respect the exclusive province of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts, by assuming that the jury resolved all such matters in a manner which supports the verdict. In brief, the reviewing court must determine: whether the evidence, considered most favorably to the government, was such as to permit a rational conclusion by the jury that the accused was guilty beyond a reasonable doubt.

19 *United States v. Ramos* 558 F.2d 545, 546-47 (9th Cir. 1977) (citation omitted) (reversing trial
20 court’s granting of a motion for acquittal); *United States v. Del Toro-Barboza*, 673 F.3d 1136,
21 1143 (9th Cir. 2012) (“when ‘faced with a record of historical facts that supports conflicting
22 inferences,’ a reviewing court ‘must presume—even if it does not affirmatively appear in the
23 record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must
24 defer to that resolution’”) (quoting *Jackson*, 443 U.S. at 326); *United States v. Bunker*, 532 F.2d
25 1262, 1264 (9th Cir. 1976) (“Credibility is exclusively within the jury’s province.”) (sufficiency
26 of the evidence claim on appeal); *United States v. Wallace*, 800 F.2d 1509, 1512 (9th Cir. 1986)
27 (“In determining whether or not the evidence is sufficient to support the verdict, all conflicts are

1 resolved in favor of the verdict.”) (citing *Ramos*, 558 F.2d at 546-47) (sufficiency of the
 2 evidence claim on appeal).

3 With respect to the weight of the evidence, the Ninth Circuit has held that the testimony
 4 of only a single witness can be sufficient. “The testimony of the one witness, if believed, was
 5 sufficient to support the conviction, and the resolution of any question as to his credibility was
 6 properly entrusted to the jury.” *United States v. Gudino*, 432 F.2d 433, 434 (9th Cir. 1970).

7 In this case, the overwhelming weight of the evidence supported the jury’s verdict as to
 8 each and every element and count of the Indictment.

9 **B. The Evidence Presented at Trial Proved Every Count of the Indictment**

10 **1. COUNT ONE – CONSPIRACY**

11 Notwithstanding Hussain’s unfocused complaints about the government’s case, the
 12 evidence at trial supported every element of the offense of conspiracy. The evidence
 13 unquestionably proved an agreement between numerous individuals – including Hussain,
 14 Stouffer Egan, CEO Michael Lynch, Stephen Chamberlain, and others – to commit wire fraud by
 15 falsely inflating the public financial statements of Autonomy through valueless transactions that
 16 Hussain and Autonomy should not have recognized as revenue and by misrepresenting and
 17 hiding the quantity, nature, and value of hardware sales as revenue. The evidence demonstrated
 18 this single conspiracy persisting over the course of several years and many quarters.

19 While the agreement clearly began as one designed to defraud investors and the public at
 20 large regarding Autonomy’s growth, value, and revenue, it continued as a joint effort to defraud
 21 Hewlett Packard (“HP”) regarding the exact same information. It makes perfect sense that, once
 22 Autonomy published false and fraudulent public financial statements, that Autonomy would then
 23 use those same inflated financial statements to pitch the sale, and its value, to HP. Hussain,
 24 Lynch, Egan, Chamberlain, and others knew that Autonomy’s financial statements were false,
 25 fraudulent and misleading and they used those false statements to incentivize HP to part with
 26 money in the acquisition. This agreement is a single conspiracy and, while complex in its
 27 various machinations, its objective was simple – falsely inflate Autonomy’s value to the public,
 28 investors, and HP.

1 Included in the trial evidence of the agreement to generate and disseminate false financial
2 records were the following:

- 3 • The testimony of every VAR representative – including John Baiocco, David Truitt,
4 Stephen Truitt, Bill Loomis, and others – that there were side agreements and agreements
5 *directly with Hussain and others* to reimburse the VAR for sales that were not completed
6 to an end user. *See, e.g.*, Ex. 44, 622, 1329, 1361, 1392, 1694.
- 7 • The wide variety of valueless transactions between Autonomy and VARs that balanced
8 out to make both sides to the transactions whole while allowing Autonomy to claim
9 worthless revenue. *See, e.g.*, Exs. 32, 42, 50, 212, 330, 427, 511, 516, 615, 622, 668,
10 707, 720, 809, 1085, 1104, 1334, 1393, 1900, 1901, 1912, 1971, 2013, 2068, 2216, 2279,
11 2523, 3036, 3063.
- 12 • The testimony of Deloitte witnesses – including Antonia Anderson and Lee Welham –
13 that Hussain and others lied to them about the actual business practices and accounting at
14 Autonomy. *See, e.g.*, Exs. 229, 484, 583, 702, 757, 1183, 1417, 1503, 1509, 1708, 1945,
15 2279. The testimony of Stouffer Egan that Hussain – with the knowledge and assistance
16 of others – directly ordered Egan to take steps that Hussain accounted for falsely in the
17 financial statements. *See, e.g.*, Exs. 654, 719, 1056, 1076, 1115.
- 18 • The testimony of Joel Scott that Hussain directly ordered Scott to take steps that Hussain
19 accounted for falsely in the financial statements, and to cover up disclosure of the
20 fraudulent financial statements.
- 21 • The testimony of Matthew Stephan that Hussain ordered Stephan and Chamberlain to
22 take steps that Hussain accounted for falsely in the financial statements. *See, e.g.*, Ex.
23 507. In addition, Stephan’s testimony that Chamberlain reported Stephan’s concerns to
24 Hussain and that Hussain ordered them to continue to act in a fraudulent manner.
- 25 • The documents admitted that represented the concerns raised by Brent Hogenson that
26 Hussain and others were engaging in fraudulent accounting practices, and the efforts by
27 Hussain and others to silence and punish Hogenson. *See, e.g.*, Exs. 915, 979, 1068, 1226.
- 28 • The testimony of multiple analysts regarding false representations made to the analysts

1 and the public regarding Autonomy's true growth, revenues, and value. *See, e.g.*, Exs.
 2 165, 291, 293, 592, 630, 2763, 2767, 2769.

- 3 • Hussain's emails to and from Lynch that (1) Hussain was afraid to answer the analysts'
 4 questions while they were actively misleading the analysts and the public, (2) Hussain
 5 and Lynch were aware that the market for IDOL and other Autonomy products was
 6 shrinking, not growing, and (3) Hussain and Lynch were aware that Autonomy would
 7 have to sell more hardware at a loss and reimburse more VAR deals in order to maintain
 8 its false public image of growth and success. *See, e.g.*, Exs. 214, 217, 281, 645, 758,
 9 1209, 1274, 1432, 1848.
- 10 • The updated spreadsheets of Hussain that demonstrated that he charted all of Autonomy's
 11 sales, was aware of the fraudulent accounting, and shared those spreadsheets and
 12 accounting with others, including Chamberlain and Lynch. *See, e.g.*, Ex. 24, 394, 492,
 13 488, 507, 519, 680, 709, 3026, 3029, 3030, 3032, 3033.
- 14 • The letters and statements to Deloitte by Hussain that were factually false in an effort to
 15 further the falsified accounting for the financial statements. *See, e.g.*, Exs. 37, 157, 159,
 16 611, 1561, 1793.
- 17 • Emails between Hussain and others demonstrating a concerted effort to falsify financial
 18 statements and embellish the growth, revenues, and value of Autonomy. *See, e.g.*, Exs.
 19 395, 490, 725, 737, 1420, 1452, 1726, 1734, 1745, 1763.
- 20 • Testimony and documents demonstrating Hussain and others communicating the false
 21 financial statements of Autonomy to HP to cause HP to acquire Autonomy and to part
 22 with money. *See, e.g.*, Exs. 1588, 1594, 1788, 2027, 2046, 2709, 3035, 3036,
 23 The discussion above is without even describing the evidence of Hussain's efforts – with
 24 his co-conspirators – to defraud the public, and then HP, about the extent to which it larded up its
 25 reported revenues with worthless hardware resales. Obviously, this portion of the scheme was
 26 carried out by – at a minimum – Hussain, Lynch, Egan, Chamberlain, and others.

27 The evidence of this portion of the conspiracy and the scheme included the following:

- 28 • Emails between Lynch and Hussain demonstrated the genesis of the effort to get Michael

1 Sullivan to maximize sales of revenue at a loss and to falsely account for those efforts as
2 “sales and marketing” expenses. *See, e.g.*, Exs. 131, 838, 1077, 1646.

- 3 • Emails detailing the financial incentives for Sullivan from Hussain and others that
4 demonstrated that the purpose was for recognizable revenue, not for sales and marketing.
5 *See, e.g.*, Exs. 131, 1845.
- 6 • Testimony by various hardware resellers including Dominic Camden and Stephanie
7 Sephabody that the system established by Autonomy could not have furthered sales and
8 marketing because the end customer was not aware of Autonomy’s role in the hardware
9 resales.
- 10 • Testimony by end customers from H&R Block and Bank of America – including John
11 Meiers and Richard Smith – that they had no idea that Autonomy was involved in the
12 hardware purchases that they made.
- 13 • Testimony by employees of Deloitte regarding the false information provided by Hussain
14 and others to Deloitte regarding the true nature and purpose of the hardware sales. *See,*
15 *e.g.*, Ex. 5788.
- 16 • Recordings of analysts calls demonstrating false statements made by Lynch and Hussain
17 and others regarding the quantity, nature, and purpose of hardware sales made by
18 Autonomy. *See, e.g.*, Ex. 776.
- 19 • Public statements, financial disclosures, and website information from Hussain and others
20 that falsely stated that Autonomy was a “unique” and/or “rare” instance of a “pure
21 software” model or company. *See, e.g.*, Exs. 291, 630, 1352.
- 22 • The crystal clear fraud perpetrated on HP through the due diligence process, including
23 Hussain and others describing Autonomy’s “products” and “sales” by hiding the sales of
24 hardware. *See, e.g.*, Exs. 2545, 2988, 2289.
- 25 • False statements made by Hussain and others to link all known sales of hardware to
26 “appliances” – where the real revenue is from the software – or to sales and marketing of
27 software. *See, e.g.*, Exs. 776, 1352.
- 28 • Hussain and others doctoring and falsifying the “Top 40” list of customers to exclude

1 customers of hardware and in include end users who were not customers at all because
 2 the sales had never passed through the VAR. *See, e.g.*, Exs. 2130, 2135, 2144, 2626,
 3 2627, 2984, 3037.

4 • Hussain and others doctoring and falsifying the “Top 40” list of contracts to exclude sales
 5 of hardware and to include contracts with end users who were not customers at all
 6 because the sales had never passed through the VAR. *Id.*

7 Hussain’s Motion does not contradict or explain this avalanche of evidence that
 8 demonstrated his agreement with others to defraud the public, investors, and then HP regarding
 9 Autonomy’s growth, revenue, and value. The evidence cited above, along with the remainder of
 10 the two month trial, when viewed in the light most favorable to the government and taking all
 11 appropriate inferences in favor of the government undoubtedly supports the jury’s verdict. The
 12 evidence overwhelmingly showed that Hussain entered into an overt agreement with others to
 13 inflate Autonomy’s perceived value to everyone who was interested, including the eventual
 14 buyer, HP.

15 Obviously, in addition to proving the illegal agreement, the evidence demonstrated no
 16 end of overt acts taken in furtherance of the conspiracy. Since there was an illegal agreement to
 17 commit wire fraud and abundant overt acts in furtherance of the agreement, Hussain’s Motion as
 18 to Count One should be denied.

19 **2. COUNTS TWO THROUGH FIFTEEN – WIRE FRAUD**

20 Obviously, since the conspiracy was proved and because Hussain and his co-conspirators
 21 carried out the scheme to defraud that they agreed on, the wire fraud counts were proven.
 22 Hussain makes no comprehensible argument to the contrary. Importantly, Hussain does not
 23 challenge any of the particular wires that the jury found were wires in furtherance of Hussain’s
 24 scheme to defraud. *See, e.g.*, Exs. 1512, 1531, 3036, 1546, 3035, 2710, 1727, 1588, 3035, 1594,
 25 2709, 1788, 3036, 2027, 2077, 3038, 2545, 2988, 2289, 2130, 2144, 2626, 2627, 2984, 2135,
 26 3037, 2241. In the absence of any dispute about the use of interstate wires to carry out the
 27 scheme to defraud, the evidence of wire fraud, as detailed above, was overwhelmingly proved at
 28 trial.

3. COUNT SIXTEEN – SECURITIES FRAUD

2 As to Count Sixteen, defendant Hussain asserts that there was no evidence that he knew
3 or intended or caused HP to make any false statements to investors. This argument is meritless,
4 particularly given the deference owed to verdict. As demonstrated above, Hussain undoubtedly
5 intended to defraud HP – and the public – regarding the value of Autonomy. Hussain obviously
6 knew that HP was a publicly traded company. Hussain obviously knew that – upon the purchase
7 of Autonomy – HP would tout Autonomy’s value to the investing public. In addition, Hussain
8 signed a letter directed to HP’s subsidiary specifically warranting information to be included in
9 public announcements about the acquisition. *See, e.g.*, Exs. 2309 & 2295. Hussain’s warranty is
10 sufficient evidence that he caused HP to make a false statement to investors. Hussain’s Motion
11 as to Count Sixteen should be denied without further consideration.

CONCLUSION

13 For the reasons stated above, the government hereby respectfully requests that the Court
14 deny defendant Hussain's motion and reaffirm the jury's proper verdict.

15 | Dated: June 6, 2018

Respectfully Submitted,

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/s/

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